1943. **File No.** OSale of Goods '43

Legal Deptt

A **BRANCH**

Subject:— Opinions under the Indian Sale of Goods Act 1930

P 10 E

OSale of Goods/43

File No

Gen. 191 c. 191-A

C O N T E N T S.

Legal Department File No. O.Sale of Goods/1943.

Sr.No.	Hil./O.No.	Subject	Pages
		Opinions under the Indian Sale of Goods Act, 1930.	
1.	1425 24-2-43	Question whether a contract for sale is valid or not when payment in full or in part has been made by the buyer and accepted by the seller or his agent.	1-2
2.	4629 2-7-43	Absence of provision regarding actual delivery- Question whether delivery to a carrier is ordinarily delivery to the purchaser	3-4
3.	3742 22-5-43	Question whether the Joint Purchase Stole is entitled to claim interest at the rate of 6% on the amount	5-6
4.	4609 1-7-43	Question whether the firm is entitled to interest from 17-12-42 on the full amount of Rs. 7003-14-6 or Rs. 403-11-6	7-8
5.	19-P-Confl. 17-6-43	Question (1) whether it would be lawful for Govt. to return to the owners the stocks if not (2) what should be the reasonable price which Govt. would be liable to pay.	9-10
6.	5818 27-8-43	Sec. 4(1) Questions whether the sale of Sugar to Govt. was complete and soon as the goods was delivered to the railway for transmission i.e. whether the pay property in the goods was transferred to the Supply Co...r. Bombay, on delivery to the Consor ~~on-way~~ carrier.	11-12
7.	6968 19-10-43	Question regarding the liability of [illegible] Chhotalal Dhanjeelal to pay the excess railway freight and demurrage.	13-14

[illegible]
10-7/5 copies

It appears that in exercise of the powers conferred by the Sugar Contro Order, 1942, the Sugar Controller for India has fixed the ex-factory prices at which sales should be made by the factories. These prices have been raised by the Government of India by Rs. 2-5-0 per maund with effect from 1st Janu January 1943. This means that the factories can change their customers at the revised rates in respect of sales made after the 1st January 1943. The question for the consideration of the Remembrancer of Legal Affairs is whether a contract for sales is valid or not when payment in full or in part has been made by the buyer and accepted by the seller or his agent.

2. The Government of India notification in question No. GVIII(1)/42, dated the 1st January 1943. Where there is a sale before that date that notification would not apply. The main question for consideration presumably is whether payment before 1st January 1943 in full or in part of the price is sufficient to constitute sale before that date. Now sale is essentially a transfer of property in the goods sold from the seller to the buyer. See section 4 of the Indian Sale of Goods Act, 1930. In order to determine whether there has been a sale or before 1st January 1943, it is therefore first necessary to determine whether there has been a transfer of property in the goods before that date. Property in goods is distinct from possession and therefore this is not merely a question of the delivery of the goods. The material points are usually (1) whether the goods are specific or whether ~~there has been~~ unascertained and (2) in the case of unascertained goods, whether there has been ascertainment and appropriation of the goods. Delivery of the goods to the buyer or a carrier usually amounts to an unconditional appropriation. (See sections 18 to 23 of the Indian Sale of Goods Act.) Payment in part or in full of the price of the goods does not seem to be ordinarily a material factor. But it is permissible for the parties to frame the contract so as to make it material. Speaking broadly, the parties may make the property in the goods pass at any time, provided they make their intention clear enough in the contract. But without knowing more of the facts of these cases and in particular the terms of the contracts it is impossible to give a satisfactory answer to the question.

3. In a case where a before 1st January 1943 there was no sale but only an agreement to sell, the questions that would arise are (1) how does the notifi-

S.A.K.
10-7
4 copies

cation affect the agreement and (2) how far is the agreement affected by (a) of sub-clause (2) of clause 6 of the Sugar Control Order. But these two questions are not clearly raised. In any case they may be left to the parties to decide, with the help of the courts, if necessary.

Sd/-P.N.Moos
22-2

Remembrancer of Legal Affairs.

U.R. to F.D.(Supply) No. 1425, dated the 24th February 1943.

S.A.K.
10-7
4 copies

Office of the R.L.A.

Papers seen and returned.

2. It appears that sub-clause (c) of clause 6 of the Sugar Cont-trol Order, 1942, has been relied on in the opinion obtained by the Indian Sugar Syndicate Ltd. That provision does not speak of actual delivery as assumed by the legal adviser of the Indian Sugar Syndicate Syndicate Ltd. Delivery to a carrier is ordinarily delivery to the purchaser (see section 23(2) of the Indian Sale of Goods Act). This aspect does not appear to have been considered by the Syndicate's legal adviser.

Sd/-P.N.Kaos
1-7

Remembrancer of Legal Affairs.

U.R. to F.D.(Supply) No. 4629, dated the 2nd July 1943.

S.A.K.
10-7
4 copies

Office of the K.L.A.

At most Government would be liable for the payment of interest only from the date of demand which is 17th December 1942. There is some doubt whether Government would be liable in the circumstances of this case for ik interest even after that date and the result of a suit would be problematical. But the Society has equitable claims and Government might well pay interest from 17th December 1942.

Sd/-P.E.Mocs
22-5-43

O.C. Remembrancer of Legal Affairs.

U.R. to F.D.(Supply) No. 3742. dated the 22nd May 1943.

S.A.K.
10-7
4 copies

Officer of Legal Affairs.

Attention is invited to the letter of 12th December 1942 by which a tender of Rs. 6,600 is said to have been made. There is nothing "provisional" about it as suggested in the F.D.(Supply) nothing. Its terms are such that a creditor might well fear that by accepting he would be precluded from claiming that a larger amount was due. The tender is therefore is not valid and would not save interest on the amount tendered. Interest is payable on the whole amount. For the requisites of a valid tender attention is invited to Halsbury's Laws of England, 2nd Edition, Volume VII, pages 197 to 202.

Sd/-P.N.Mace
29-6

O.C. Remembrancer of Legal Affairs.

U.R. to F.D.(Supply) . No. 4609, dated the 1st July 1943.

S.A.K.
10-7
4 copies

Office of the R.L.A.

In the circumstances stated the importers could it ~~xxxxx~~ demand the return of their grain on the ground that there was no proper sale. It is very doubtful if Government could at this stage repudiate the deal if the importers want it to be completed. An amicable settlement is advicable for it is difficult to say how a Court would determine the price in this case. F.D.(Supply) should consult the Government Solicitors (Messrs. Little and Company) under rule 14 of Law Officers' Rules, before entering upon further correspondence with the parties.

Sd/-P.E.Hoos
17-6

O.C. Remembrancer of Legal Affairs.

U.R.6 F.D.(Supply), No. 19-P-Confl., dated 17th June 1943.

S.A.K.
10-7
4 copies

The sugar was despatched by Messrs. Begg Sutherland and Company prior to 1st January 1943 but delivery thereof was taken by Government after that date. The railway receipts were made out in the name of the Supply Commissioner, Bombay, and were delivered to him through the Company's bankers on payment of their bills of costs. On these facts the main question for consideration is whether the sale of sugar to Government was complete as soon as the goods were delivered to the rly railway for transmissionand i.e. whethere the property in the goods was transferred to the Supply Commissioner, Bombay, on delivery to the common carrier (see section 4(1) of the Indian Sale of Goods Act, 1930).

2. Section 25(1) of the Indian Sale of Goods Act, 1930, provides: "Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract the seller may, by the terms of the contract or appropriation reserve the rights of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to a buyer or to a c arrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled". In the Ford Automobiles Ltd. v. The Delhi Motor and Engineering Co. (24 B.L.R. 1140) where the plaintiffs consigned cars with the B.B.& C.I.Railway for carriage from Bombay to Ambala and made out the railway receipt in their own name as consignees and sent the same through their bank-ers along with the bill for the price of cars to be recovered from the defendants against the railway receipt, Mulla J observed : 'Was it the plaintiffs' intention to retain the ownership of goods until the price was paid, or was it their intention to transfer the ownership to the defendants immediately on delivery of the cars to the railway company? I am inclined inclined to think that the plaintiffs' intention was to retain the ownership of the goods until the defendants paid the price A railway xxxx receiption is a document of title to goods (see section 2(4) of the Act). In Ram Lal v. Bhola Nath (I.L.R. 42 All. 619 at p. 629), which Mulla J. in the Bombay ccase cited with pproval, it was held that for the purposes of title it made no difference

whether the receipt of goods consigned by rr rail was made out in the name the consignor or in the name of the consignee so long as the goods remained the property of the consignor till their price was ~~was~~ paid. The price had to be paid at the place of destination and the goods only passed to the consignee when the consignor's agent having received the price handed over the goods or their equivalent , the railway receipt, to the consignee. In the light of these two rr rulings , it follows that if the price of the sugar was not paid by the Supply Commissioner before 31st January 1943, the title to the sugar still vested in Messrs. Begg Sutherland and Company, in which case no claim for refund of the excess charged under the Government of India Notification No. GVIII(1)/42 dated 1st January 1943 , would, it appears be tenable.

Sd/- P.N.Moos
25-8

Remembrancer of Legal Affairs.

U.R. to F.D.(Supply), No. 5818, dated 27th August 1943.

S.A.K.
10-7
4 copies

Office of the R.L.A.

The view taken by the District Government Pleader, Ahmedabad, with regard to the liability of Shah Chhotalal Chhaganlal to pay the excess railway freight and demurrage is correct. "Railway freight" do does not include "demurrage". The former is a charge for the carriage of goods while the latter means compensation for undue -dete detention (see section 61 and Rules 6 and 7 of Rules made under sect section 47(1)(f) of the Indian Railways Act, 1890). In the statement made by Dahyabhai on 27th August 1942 on behalf of Shah Chhotalal he agreed to pay the railway freight. This statement read with the telegram of the Sugar Controller to the Collector, Ahmedabad, to offer to sell sugar on payment of control price and full railway freight will prove the liability of Shah Chhotalal to pay even the ex excess freight. But he cannot be held liable for demurrage. Consequently Government can claim the excess freight from Shah Chhotalal todyay but not the demurrage in respect of 6,060, bags rece ved before 27th September 1942.

2. By his letter dated 27 th September 1942 Shah Chhotalal made it clear that he would receive all future consignments on the clear u understanding that the railway freight from factory to Ahmedabad direct would be chargeable. The consignments having thereafter been del delivered to Shah Chhotalal without any protest. Government must be deemed to have agreed to the terms of Shah Chhotalal Specified in his letter dated 27th September 1942. Consequently Government would not be entitled to claim either excess freight or demurrage in respect of 1,604 bags of sugar delivered to Shah Chhotalal after 27th September 1942.

3. In the circumstances Government can claim from Shah Chhotalal only Rs. 13,291-1-0 on account of excess freight. It appears that Shah Chhotalal has offered without prejudice to pay Rs. 6,500 in full satisfaction of Government's claim. It is therefore desirable to settl the claim privately instead of taking it to a Court of law.

Sd/-P.N.Mehta
18-10

Remembrancer of Legal Affairs.

U.R. to F.D.(Supply) .No. 6968, dated the 19th October 1943.

S.A.V.
10-7/44 C.